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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 896

GEORGE K. WYMAN, as Commissioner of the Department of Social Services of the State of New York, and the DEPARTMENT OF SOCIAL SERVICES OF THE STATE OF NEW YORK,

Defendants-Appellants,

against

EDNA ROTHSTEIN, SYLVIA MILLER, HENRIETTA BATSON, CATHERINE JONES and DOLORES HARVANEK, as individuals and on behalf of all other persons similarly situated,

Plaintiffs-Appellees.

REPLY BRIEF AND APPENDIX FOR APPELLANTS

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REPLY BRIEF FOR APPELLANTS

Introduction

Since appellants' brief was filed in this Court the Legislature amended § 131-a of the New York Social Services Law. It was signed on March 31, 1970 and took effect on April 1, 1970. The purpose of the amendment was to increase the levels of grant to New York State welfare recipients including plaintiffs herein to account for increases

in the cost of living. A copy of that bill, which has become Chapter 120 of the Laws of 1970, is appended for the Court's convenience.*

Under the amendment the statutory differential between New York City recipients and those residing elsewhere in the State was continued since the Legislature specifically found that there were "higher costs of urban living in the utilization of programs, services and facilities * * *". The new schedules provide for increases in the basic grant of $7.00 for one individual, between $5.00 and $6.00 for two to seven individuals and $4.00 per person for larger families. The increases contained in subsection 3 for districts other than New York City are slightly less (p. 36, *infra*). However, the power of the Commissioner to raise those levels pursuant to subdivision 4 is continued.

The Commissioner has issued regulations raising the levels for districts outside New York City in much the same way as was done in the previous regulations which are the subject of this action.** A copy of these new regulations is also appended (p. 18, *infra*).

While the levels of grants under the new statute are considerably higher than those that were before the District Court, the basic legal issues presented by the District Court opinion are not altered.

* It is possible that before the Legislature adjourns this month that it will further amend the Social Services Law with regard to eligibility grants and allowances in order to comply with this Court's recent decision in *Rosado v. Wyman*, ——— U. S. ———, 38 L. Ed. 2d 269 (decided April 6, 1970). If that occurs, appellants will attempt to furnish copies of that statute to the Court and parties as soon as possible.

** The recipients from the former SAU counties (the cases here consolidated) are given the same grants as those residing in New York City pursuant to the injunction issued by the Court below.

A.

Even if the Statutory Claim Were Found to Have Merit, It Should Be Considered by the District Court in the First Instance.

The extraordinarily heavy justification required for the sweeping injunctions issued below is not supplied by any of the arguments offered in plaintiffs-appellees' brief. Indeed, plaintiffs finally acknowledge what the State has insisted all along—that the District Court strained to reach the constitutional question, contrary to the rule commanding avoidance of such questions where the case may be disposed of on other issues, and that it reversed the presumption of validity of the state statute.

Plaintiffs now concede "the district court erred in not determining the probabilities of appellees' success on the statutory claim" (Br. p. 42). This was no mere procedural misstep. *It was an integral part of the lower court's attempt*, at appellees' zealous prompting, to overturn the statute by any means at hand, regardless of violence done to the norms of judicial review. The plain fact is that this was substantial error which plaintiffs' sophistry fails to obscure, and which this Court's recent opinion in *Daudridge* v. *Williams* (—— U. S. ——, 38 USLW 4278 [decided April 6, 1970]) highlights:

> "We consider the statutory question first, because if the appellees' position on this question is correct, there is no occasion to reach the constitutional issues. *Ashwander* v. *T.V.A.* 297 U. S. 288, 346-347 (Brandeis, J., concurring); *Rosenberg* v. *Fleuti*, 374 U. S. 449."

This Court added (id., fn. 6) that "[w]hen attention has been focused on other issues, or when the court from which a case comes has expressed no views on a controlling question, it may be appropriate to remand the case rather than deal with the merits of that question in this Court." Since

the District Court here expressly avoided consideration of the statutory issue, which was not extensively briefed or argued below, remand here is clearly proper.

Plaintiffs' objections to the material adduced by the State are ironic.* It is they who have shifted ground and now seek to have this Court uphold the injunctions on a totally different ground from that employed by the lower court. Whether the statutory argument provides an adequate basis for the broad preliminary injunctive relief granted plaintiffs is an issue which the District Court, not this Court, should grapple with in the first instance.

B.

Plaintiffs Fail to Justify the Special Standard Carved Out by the Lower Court.

Dandridge v. *Williams* highlights the impropriety of the standard employed by the Court below to measure the validity of the statute. The District Court carved out an unjustified exception to the rule which bars the annulment of a statute unless the differentiation challenged is utterly

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* Plaintiffs' aspersions on the qualifications of Vernon Murphy, Esq. whose affidavit supported defendants' motion for summary judgment, are unwarranted. The time to prepare papers for the convening of the three-judge Court was very brief and further curtailed by the Court-ordered deposition of defendant Wyman. Plaintiffs' papers had of course been prepared before the institution of the order to show cause. Furthermore, the Board of Social Welfare was meeting during the week of July 14 and that meeting had been disrupted already by the absence of the Commissioner and the Deputy Commissioner at the deposition on July 15.

Finally, the only copy of the draft of the original affidavit prepared with the expert advice of many persons in the Department of Social Services for the Commissioner's signature was stolen from Mr. Murphy's briefcase on the night of July 15 and a new draft had to be prepared summarily on July 16. Logistically, only Mr. Murphy, who was designated by the Commissioner as the Department's representative in charge of this litigation, was available to sign it at that late date.

irrational. *McDonald* v. *Board of Election Commissioners*, 394 U. S. 802. It defied that rule, and concluded that because welfare legislation was involved "the equal protection standard to be applied should be stricter than that used upon review of commercial legislation" (112). Our main brief (pp. 34-36) refutes this conclusion. And *Dandridge* v. *Williams* disposes of it. Upholding a statute establishing maximum welfare allowances, this Court specifically held (38 USLW 4281):

> "[H]ere we deal with state regulation in the social and economic field, not affecting freedoms guaranteed by the Bill of Rights, and claimed to violate the Fourteenth Amendment only because the regulation results in some disparity in grants of welfare payments to the largest AFDC families. For this Court to approve the invalidation of state economic or social regulation as 'overreaching' would be far too reminiscent of an era when the Court thought the Fourteenth Amendment gave it power to strike down state laws 'because they may be unwise, improvident, or out of harmony with a particular school of thought.' *Williamson* v. *Lee Optical Co.*, 348 U. S. 483, 488. That era long ago passed into history. *Ferguson* v. *Skrupa*, 372 U. S. 726.
>
> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical it may be, and unscientific.' *Metropolis Theatre Co.* v. *City of Chicago*, 228 U. S.

61, 69-70. 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' *McGowan* v. *Maryland*, 366 U. S. 420, 426.

To be sure, the cases cited, and many others enunciating this fundamental standard under the Equal Protection Clause, have in the main involved state regulation of business or industry. The administration of public welfare assistance, by contrast, involves the most basic economic needs of impoverished human beings. We recognize the dramatically real factual difference between the cited cases and this one, but we can find no basis for applying a different constitutional standard. See *Snell* v. *Wyman*, 281 F. Supp. 853, aff'd, —— U. S. ——. It is a standard that has consistently been applied to state legislation restricting the availability of employment opportunities. *Goesaert* v. *Cleary*, 335 U. S. 464; *Kotch* v. *Board of River Port Pilot Comm'rs*, 330 U. S. 552. See also *Flemming* v. *Nestor*, 363 U. S. 603. And it is a standard that is true to the principle that the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of wise economic or social policy."

That language should be dispositive here. As here, there was (*Id.* fn. 17) "no contention that the Maryland regulation is infected with a racially discriminatory purpose or effect such as to make it inherently suspect." And, significantly, Maryland also has a slight geographical differential in welfare allowances (not challenged in *Dandridge* v. *Williams*).

See page 4278:

"The regulation here in issue imposes upon the grant that any single family may receive an upper limit of $250 per month in certain counties including Baltimore City, and of $240 per month elsewhere in the State."

The plain fact is that the family maximum grant sustained in that case worked far more of an actual inequity than the narrow geographical distinction here at issue. The plaintiffs there received the maximum for "Baltimore City, where the $250 month maximum grant applies". (opinion of DOUGLAS, J., dissenting, 38 USLW 4283, fn. 1) —instead of $296.15 and $331.50 per month respectively (*Id.* p. 4283). That disparity far exceeds the slight differential for New York City residents under § 131-a, totalling $208 instead of $191 for a family of four, or $70 instead of $65 for an individual recipient, exclusive of shelter costs.

The reasons for the small differential for New York City recipients are discussed in our main brief and need no amplification here. That the State's finding of higher actual needs for city dwellers on welfare is not the only possible result we do not doubt. Indeed, as plaintiffs correctly state (Br. p. 25), defendant Wyman has recently advocated a uniform statewide standard of need and of allowances as part of a continuing policy discussion. But so long as the legislative determination was in the area where reasonable minds might differ, the statute may not fairly be deemed arbitrary and consigned to oblivion. Just as this Court held in *Dandridge* v. *Williams* (*id.* 4282):

> "We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration, *Goldberg*

berg v. *Kelly*, *ante*. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients."

This Court itself recognized that although New York City was included with certain surrounding counties in New York's public assistance scheme prior to July 1, 1969, the actual payment to New York City recipients was considerably higher than that generally throughout the rest of the State. Indeed, this Court pointed out in *Rosado* v. *Wyman*, *supra*, at 38 USLW 4271:

> "The impact of the new system has been to reduce substantially benefits paid to families of these petitioners and of those similarly situated, and to increase benefits to New York City recipients by almost $40,000,000. 304 F. Supp. at 1369-1370. The effect of the new program on upstate cases is less severe, with gains to some families apparently cancelling out losses to others, but the net effect is a drastic reduction in overall payments since New York City recipients comprise approximately 72% of the State's welfare clientele. 304 F. Supp. at 1369."

The very existence of the cyclical grant to cover recurring special grants in clothing and household furnishings to which every New York City recipient was entitled was a substantial difference. The statutory difference which plaintiffs object to is $25.00 a month for a family of four and $10.00 a month for an individual. This difference reflects approximately the difference between the cyclical grants and the relatively infrequent special grants for which non-New York City recipients were qualified. Thus for a family of four the difference was $25.00 a month. The amount of the cyclical would be $33.33 a month. This Court specifically recognized that certain special

grants were considered regularly recurring expenses to City welfare recipients (*id*, at 38 USLW 4272);

> "* * * particular items, such as laundry, telephones, had formerly been deemed essential by New York, and were considered regular recurring expenses to a significant number of New York City Welfare residents. We need look no farther than the state social service department's own regulations and the action taken by the state administrators in providing the $25/quarter cyclical grant to city residents in the 1968 pilot project."

The cut in welfare expenditures found by this Court in *Rosado* v. *Wyman* was based on change of status of New York City recipients. However, it must be remembered that the Legislature made an effort to continue the higher grants which had previously been accorded New York City recipients and this effort is the subject of the instant proceeding.

Particularly in the context of welfare, with enormous fluctuations in allowances from state to state (see our main brief at pp. 38-39), and with the imprimatur of this Court on family maximums, which create substantial differences in allowances to persons with admittedly similar needs, it would parody justice to insist that New York abolish its slight differential benefiting metropolitan welfare recipients. In determining precisely how to "allocat[e] limited public welfare funds among the myriad of potential recipients," legislative decisions must be reached and those decisions will of necessity benefit some. New York has imposed no family maximum. The very statute complained of by plaintiffs authorizes the Commissioner to abolish the differential upon proof that the standard of need and cost of meeting that standard in any county equals that in New York City (§ 131-a[4]). If New York's legislative discretion did not fairly extend to this, then it has no discretion at all.

C.

The Presumption of Validity of the State's Grounds for the Differential Has Not Been Overcome.

The attempts of plaintiffs to impugn the bases for the legislative differential do not withstand scrutiny. There is no evidence whatever to warrant the claim (Pltfs' Br. p. 58) that there is any difference in private income between welfare recipients in New York City and those outside the city. There is no procrustean requirement that a standard of need be identical throughout the State. Such a rule would amount to a straining at gnats, since such standards vary so sharply from one state to another. What is required is that such standards within a given state not be based on caprice. The burden of showing this caprice was on plaintiffs and it has not been satisfied on this record.

Plaintiffs mistake our discussion of the impact of the far higher crime rate on welfare recipients. We made no claim that stolen welfare checks could not be replaced upon application by the recipient, but the number of such thefts demonstrates the specific victimization of the New York City welfare recipient in the broader picture of the high crime rate in the city. Moreover, other stolen property for which specific figures were not available—household appliances, clothing, watches and the like—are not covered by any grant for replacement. And the added costs of locks, window gates, taxicabs when returning home at late hours, and other direct results of the higher urban incidence of crime are present even though plaintiffs choose to ignore them.

Similarly, plaintiffs mistake our reference to rent control within New York City. The cost of shelter is a major component of the standard of need. See "Simplified Methods For Determining Needs," U. S. Dept. of Health, Education and Welfare (1961), copies of which are appended to the *amicus* brief of the United States. See also

18 NYCRR § 352.4(b). Thus, lower rents within New York City directly result in a lower standard of need, and higher rents outside the City in a higher standard of need, compensating for the slightly higher allowance within the City for components of the standard of need other than rents. See our main brief at pages 25-27. The fact that rent control exists in a few suburban areas (Pltfs'. Br. p. 61) is irrelevant here where the figures set forth in our brief at pages 25-26 and the relatively high rent paid by plaintiffs demonstrate beyond cavil that average rents for welfare recipients are far higher outside the City.

Reliance by plaintiffs on the events of 20 years ago (Br. p. 63) sheds little light on the issue at bar. The suggestion therein that the State "exhibited a pattern of non-conformity" is far-fetched since admittedly, between 1951 and 1969, recipients in New York and the suburban counties received precisely the same allowance.

Plaintiffs' repeated denigration of the State's reasons for the disparity runs completely counter to this Court's admonitions in *Dandridge* v. *Williams* (p. 4282) that "the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocation of limited public welfare funds among the myriad of potential recipients"; and in *Rosado* v. *Wyman*, that "Speculation as to legislative and executive motive, is to be shunned." The statute explicitly provides for an increase in allowance levels to that provided New York City recipients upon a showing to the Commissioner that such an increase is warranted. It is to the Department of Social Services, with its experience in administering the program, its staff of civil servants and expertise in the field, that such an application should be addressed, at least in the first instance. As we have shown, any county Social Services Department is free to make such an application, and any recipient is free to request that such an application be made. Judicial review of a denial of such an

application is available in the New York courts under Article 78 of the Civil Practice Law and Rules. In this posture, the sweeping injunctions granted by the Court below were improvident and should be set aside.

Plaintiffs' present reliance on the non-conformity of § 131-a to the Social Security Act is a question this Court need not reach. See page 3, *supra*. But if the merits were reached, that claim is insubstantial.

The Social Security Act requires only that a state plan operate throughout an entire state and be administered by one state agency. 42 U.S.C. §§ 602(a)(1), (3); 1382(a)(1), (3). New York's plan meets these criteria. As the United States' *amicus* brief concedes (Br. pp. 7-8), the Social Security Act does not even explicitly require a state to enunciate a standard of need, much less one at precisely the same level throughout the State. Of course New York has had an expressed standard of need for decades—enunciated administratively (18 NYCRR § 352.4). This standard is statewide in every sense, and fully comports with every requirement of Congress. It is the level of benefits, as distinct from the standard of need, which differs slightly. (See the discussion in *Rosado* v. *Wyman*, U. S. ——, 38 USLW 4266, 4269, 4271-2 [decided April 6, 1970]). And nothing in the Social Security Act forbids that.

It is the regulations of HEW, not any act of Congress, which speak of an "objective and equitable" state plan (45 CFR 233.20[a][1]) and a "statewide" standard to be "uniformly applied throughout the state" (45 CFR 233.20[a][2][i], [iii]). There is nothing in the statute (§ 131-a) violative of these regulations. The requirement that a state plan be "objective and equitable" is no broader than the due process and equal protection clauses. Thus it does not advance plaintiffs' position here. And the regulation referring to uniform statewide application cannot, in the absence of specific language, be held to forbid

geographic or other distinctions in a state plan. Indeed, New York's § 131 for many years has required the state standard of need to take into account "variations in cost from time to time and between localities." HEW has repeatedly approved New York social services plans formulated pursuant to that standard, which explicitly permits geographical variation. And levels of assistance in New York have for decades contained slight geographical differentials (see main Br. p. 8, fn. 3).

Thus, whether the Constitution, the Social Security Act or the HEW regulations be considered, the touchstone is in any case whether the differentials are arbitrary. If they meet the test of rationality under the equal protection clause, they cannot reasonably be held violative of anything in the Act or regulations.

Apart from this, this Court held in *Rosado, supra*, that non-conformity with a federal statute, as opposed to unconstitutionality, would not be a basis for a declaration of the invalidity of the state statutes. At most it would constitute a ground for declaratory relief and an appropriate injunction by the District Court against the payment of federal matching funds, according to the new schedules, should the State not develop a conforming plan within a reasonable period of time." 38 L ed 2d W 1023. Appellants in original Perhaps for this reason plaintiffs stressed their equal protection claim below, and the Court improvidently ignored the statutory issue and prematurely decided the Constitutional one. Under the statutory question, the only one the District Court should have examined (*Rhoades v. Williams, supra*), the injunction issued by it could not have been issued.

Perhaps also this was because, as we have seen, it was evident that the Social Security Act was not violated by anything in § 131 a. The requirement of a "statewide" standard "uniformly applied throughout the state" is contained in the regulations, not the statute. And whatever

the effect of non-conformity with the Social Security Act itself (*Rosado* v. *Wyman*, *supra*; *King* v. *Smith*, 392 U. S. 309), if the asserted non-conformity is only between the state statute and a regulation of HEW, this non-conformity, even if established, would not warrant the extraordinary drastic preliminary relief granted by the Court below. Nothing in *Rosado* justifies plaintiffs' suggestion that non-conformity with the regulation would suffice to support the injunction here imposed on the State. *Rosado* involved [illegible] *Smith*. In *Rosado*, this

[illegible]

II

The Unjustified Attack on the State Legislature's Motives Indulged in the Lower Court was an Impermissible Basis for Its Invalidation of a State Statute Promoted by Democrats

[illegible]

"speculation as to legislative and executive motive is to be shunned." Yet this is just what the Court below did, and what plaintiffs (and the Center on Social Welfare Policy and County of Nassau as *amici*) continue to do.

The issues in this case are whether the District Court should have stayed its hand in view of the state remedy available to the plaintiffs under the forum of the state statute (*Hart v. Bingaman*, [illegible] 38 USLW 4170), and whether (assuming ripeness) HEW's an appeal was incompatible with the Social Security Act; an issue which the District Court never decided. In the present posture of this case, reversal and remand, in order for the District Court to rule on the statutory issue of the grant of defendants' motion for summary judgment, is the only proper course.

CONCLUSION

The order of the District Court should be reversed and the case remanded with directions that defendants' motion for summary judgment be granted.

Dated: New York, New York, April 16, 1979.

Respectfully submitted,

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Appendix

Chapter 120 Laws of 1970 (New York)

An Act

To amend the social services law, in relation to a schedule of allowances and grants for public assistance

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings and purpose. In nineteen hundred sixty-nine the legislature established schedules of maximum monthly grants and allowances of public assistance for social services districts in New York state, based upon the costs of meeting the needs of public assistance recipients in the various social services districts. These schedules, effective July first, nineteen hundred sixty-nine, reflected the cost of needs based on the latest cost studies of the department of social services completed prior to passage of the legislation. New studies of cost needs made by the department projected to May first, nineteen hundred seventy indicate a cost of living increase since the last study of approximately ten per cent.

The legislature therefore finds and declares that it is necessary and in the best interests of the people of the state to provide new schedules for maximum monthly grants and allowances reflecting the cost of living increase, and further that there exist differences in the cost of meeting such needs of public assistance recipients in various areas of the state which reflect the higher costs of urban living and the utilization of programs, services and facilities, and that these differences are recognized and shall continue to be recognized in the levels of monthly grants and allow-

[ ] Explanation. Matter in italics is new; matter in brackets [ ] is old law to be omitted.

anges established for the various social services districts throughout the state.

§ 2. Subdivision two of section one hundred thirty-one-a of the social services law, as added by chapter one hundred eighty-four of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

2. The following schedule of maximum monthly grants and allowances shall be applicable to the social services district of the city of New York:

Number of Persons in Household						
One	Two	Three	Four	Five	Six	Seven
[$50	$116	$162	$208	$254	$297	$340]
$77	*$128*	*$179*	*$230*	*$281*	*$328*	*$375*

For each additional eligible needy person in the household there shall be an additional allowance of [forty-three] *forty-seven* dollars monthly.

§ 3. Subdivision three of section one hundred thirty-one-a of such law, as added by chapter one hundred eighty-four of the laws of nineteen hundred sixty-nine, is hereby amended to read as follows:

3. The following schedule of maximum monthly grants and allowances shall be applicable to all other social services districts:

Number of Persons in Household						
One	Two	Three	Four	Five	Six	Seven
[$68	$101	$142	$183	$224	$257	$290]
$66	*$111*	*$156*	*$201*	*$246*	*$282*	*$318*

For each additional eligible needy person in the household there shall be an additional allowance of [thirty-three] *thirty-six* dollars monthly.

§ 4. This act shall take effect April first, nineteen hundred seventy.

Bulletin 134, "Standards of Assistance," March 31, 1970

New York St. Department of Social Services

These page replacements for Bulletin 134 reflect the major changes in standards of assistance enacted into law effective April 1, 1970.

1. Increases in basic monthly allowance for individuals and families in Schedules SA-1, SA-2 and SA-3 (p. 41, 43, 44).
2. An increase in the additional allowance for AABD applicants, recipients and essential persons (p. 7).
3. Disregard of $7.50 per month of *any* income for AABD applicants and recipients (p. 21).

In accordance with the recognition in law of a cost-of living increase of approximately 10%, Department Regulations also provide for an increase in personal allowances for persons living in boarding or nursing homes (p. 14) and for the cost of meals not prepared at home (Schedules SA-6 (p. 46) and SA-8 (p. 23)).

A one-time clothing allowance of $55 has also been provided for recipients in an approved training program, including the Work Incentive Program (p. 11).

George K. Wyman
Commissioner

III.

C. *Needs*

Department Regulation Section 352.1

(a) *Of persons who constitute or are members of a family household*

(1) For all items of need, exclusive of shelter, fuel for heating, additional cost of meals for persons who are unable to prepare meals at home, additional grants for replacement of clothing and furniture and allowance for occupational training, additional grants for recipients of AABD as provided under paragraph (4)

each social services district shall utilize the schedule of monthly grants and allowances applicable to it established in paragraph (2) of this subdivision.

(2) The monthly grants and allowances shall be as follows:

[See schedules SA-1, SA-2 and SA-3.]

(3) For the purpose of such monthly grants and allowances a child or children or adults residing with self-maintaining non-legally responsible relative or friends, shall be considered as a household separate from the self-maintaining relatives or friends.

(4) *Additional allowance for AABD recipients*

(a) Each AABD recipient shall be allowed an additional allowance in the regularly recurring estimate of need in the amount of $10.00 per month for recipients living alone and $6.25 per month for recipients living with a family.

(b) For purposes of this requirement:

(i) A person shall be considered "living with a family" if residing with other members of his family who are in receipt of public assistance.

(ii) The allowance shall be provided to persons not residing in institutional facilities, such as a home for adults or home for the aged, or residing in boarding homes or in family care arrangements. [Note: Persons in such facilities are eligible to receive a personal expense allowance of $17.00 per month. [See Department Regulation Section 352.1(b)(2)(i)]

(iii) Such allowance shall be provided for an essential person in AA/SD.

[Grants for Essential Persons in AA/SD, Department Regulation Section 385.3(c)]

A grant shall include provision for the needs of a person, whether a relative or non-relative of the recipient, whose continuous presence in the home of the recipient is essential to the well-being of the recipient, provided:

(1) The person is residing in the recipient's home;

(2) The person is eligible for public assistance other than AA/SD and AIM on the basis of his income and resources;

(3) The person agrees to render necessary services and care to the recipient; and

(4) The recipient approves the plan.]

(d) (c) Each social services district shall make an allowance for fuel for heating when it is not

included in the cost of shelter in accordance with the following schedule:

[See schedule SA-4.]

(66) For children or adults residing with self-maintaining non-legally responsible relatives or friends, an allowance for fuel for heating shall be pro-rated.

(66) An additional allowance for fuel shall be granted when made necessary by exceptionally severe weather, overly exposed location or unusually poor construction of a dwelling, or by reason of poor health. Circumstances requiring such additional allowance shall be fully recorded.

(67) *Shelter*

(a) Each social services district shall establish an allowance schedule for rent based on the number of rooms, with or without heat, utilities, furniture and furnishings. Such allowance schedule shall provide a sufficient amount for all persons to obtain housing in accordance with standards of public health in the community. Such schedule shall make provision for the payment of rent in state aided public housing and in middle income housing. The schedule established shall be filed with the department. An allowance for rent shall be made in the amount actually paid by the recipient but not in excess of the appropriate maximum of such schedule. When the local recipient is obligated to pay for water or a separate charge, an additional allowance shall be made for the additional amount required to be paid.

Appendix

(iii) For children or adults residing with a self-maintaining non-legally responsible relative or friend, the allowance for rent shall be negated.

(iii) An allowance for rent shall be made for a period not in excess of 60 days, when essential to retain a housing accommodation to which a recipient temporarily receiving care in a medical facility may return upon discharge from such facility.

(iv) An allowance for rent shall be made for recipients who are tenants of city, state or federally aided public housing in accordance with the following schedule:

Apartment Size	*Monthly Rent*
"0" Bedrooms	$ 69
1 Bedroom	81
2 Bedrooms	90
3 Bedrooms	101
4 Bedrooms	107
5 Bedrooms	110

Note: Required fees or charges shall be provided for such items as security deposit, extermination, deposit against breakage and loss, and keys. See Section D Purchase of Services.]

(v) *Shelter costs for client-owned property*

(a) *Carrying charges*

On client-owned property used as a home, carrying charges shall be met in the amount actually paid by the recipient but not in excess of the appropriate maximum

of the rent schedule for the items of taxes, interest on mortgage, fire insurance, water rates and assessments.

[See Department Regulation Section 352.8(b)(3).]

III.C.(a)(6)

(vi) If the furniture or household equipment of an applicant who has not been a recipient of public assistance within the previous six months is essential to making his living accommodations habitable but are presently encumbered by a chattel mortgage or were purchased under a conditional sales contract, every effort shall be made to defer, cancel or reduce payments on such chattel mortgage or conditional sales contract. If all such efforts fail, an allowance may be made for a compromise settlement of such payments or, if a compromise cannot be reached, for other essential payments.

[Note: The above provision is limited to persons who have not been recipients of public assistance during the six months preceding the present application.]

(8) *Additional cost of meals*

Provision for the additional cost of meals for persons unable to prepare meals at home shall be allowed in accordance with the following schedule: [See schedule SA-5.]

(9) *Grants for clothing and furniture in case of catastrophe*

Each social services district shall make grants for partial or total replacement of clothing or furniture

which has been lost in a fire, flood or other like catastrophe. These grants, for one or more items of clothing or furniture shall be based upon the current local price of such item, but shall not exceed the maximum allowances in the following schedule. [See schedule SA-6.]

(10) *Occupational training allowances.*

(a) Recipients in an approved occupational training program, including the Work Incentive Program, shall receive upon enrollment, [illegible] a one-time allowance of $55.00 to meet additional clothing needs incident to such training.

New

(b) Allowances shall be made for the costs of tuition, books, supplies and other essentials required to enable an unemployed parent or minor between 16 and 21 years of age receiving ADC and any person receiving HR to obtain suitable occupational training from a high school or other institution licensed or approved by the State Education Department, provided such person could not otherwise obtain such training without cost and demonstrates to the satisfaction of the social services official that he or she possesses the talent, aptitude and ability necessary to benefit from the proposed course of training.

(10) *Payment for services and supplies already received.*

Assistance grants shall be made to meet only current needs. Under the following specified circumstances payment for services or supplies already received is deemed a current need.

Appendix

(iii) If a check for a grant is reported lost or stolen, an affidavit of loss shall be required at the time of issuance and payment of the check shall be stopped. Such check shall be replaced. If payment cannot be stopped, the agency shall claim state reimbursement on only one of the two checks.

(iv) An allowance to meet the cost of rent, shall be made for the entire month in which the case is accepted if essential to return the living accommodation. A grant to meet the cost of such items as taxes and interest on mortgages may be made for the billing period immediately preceding acceptance, if such payment is essential to the health and safety of the recipient.

(v) A grant to pay for utilities already furnished to prevent a shut off up to but not exceeding a four month period immediately preceding the date of application for utilities for an applicant on the same dwelling for which he is applying for utilities.

[Note: Section 42 of the Transportation Corporations Law provides that gas or gas and electric corporations must provide service to recipients of assistance even though the recipient owes arrearages to the corporation for service provided in a prior dwelling place.]

(vi) A grant may be made to pay for rent, taxes or mortgage for a period prior to the month in which the case was opened or prior to the period in which a current bill was due when

the case was opened under the following specified conditions:

(*a*) such payment is essential to forestall eviction and no other facilities are available; and

(*b*) the health and safety of the applicant or recipient is severely threatened by failure to make such payment; and

(*c*) the authorization for payment of such a back bill receives special written approval by the social services official or such other administrative officer as he may designate, provided such person is higher in authority than the supervisor who regularly approves authorization.

[Note: Department Regulation Section 351.27 provides:

Correction of error

(a) A social services official may make a grant to correct an error which denied an application for assistance, discontinued a recipient from assistance or otherwise deprived a recipient of the full amount to which he was entitled, for a period not in excess of two months preceding the month in which the correction is made.

(b) A social services official may make a grant to correct an error after a request for a fair hearing but prior to the hearing itself or the hearing decision, retroactive to the date the incorrect action was taken.

Appendix.

Department Regulation Section 358.8 provides:

Correction of an error pursuant to a fair hearing decision

When a fair hearing decision has ordered the correction of a discontinuance, the correction of a denial of an application for assistance, or the correction of the amount of assistance, a grant shall be made to cover the full amount to which the applicant or recipient was entitled in accordance with the decision for the entire period from the date the incorrect action was taken.]

(b) ***Of persons whose living arrangements are board and room or care in a congregate facility***

Department Regulation Section 352.4 (continued)

(1) For persons unable to be cared for in their own homes, board and room, care in a home for adults, convalescent home, home for the aged, private proprietary or voluntary residential facility for the mentally retarded or other suitable facility shall be provided by the social services district. Each social services district shall establish rates for board, for board and room, and for care in a home for adults, a convalescent home, a home for the aged, and private proprietary or voluntary residential facility for the mentally retarded, other than a hostel for the mentally retarded, as follows:

(i) For board and room

An amount to cover the cost of board, the laundering of linens, additional utilities and household supplies, plus room rent and a reasonable profit except where furnished to a relative.

(ii) For care in a proprietary home for adults, convalescent home and private proprietary residential facility for the mentally retarded: The lowest rate for which suitable care can be purchased from such facilities.

(iii) For care in a non-profit home for adults, convalescent home, home for the aged, or a voluntary residential facility for the mentally retarded: The per diem cost of such care with due consideration to the services provided and the tax exempt status of the home.

(2) (i) Adult recipients living in a boarding home, home for adults, home for the aged, intermediate care facility, hostel for the mentally retarded, residential facility for the mentally retarded, and recipients receiving care in infirmaries, nursing homes or similar medical facility shall be granted an allowance of $17 per month for personal expenses, including clothing and incidentals.

(ii) For patients incapable of handling cash, clothing and incidentals not provided by the facilities shall be provided in kind.

(3) An allowance of the rate for shelter in a congregate facility shall be made for a period not in excess of 30 days when essential to retain place to which a recipient temporarily receiving care in a medical facility may return upon discharge from such facility.

(4) An allowance to meet the cost of board and room or care in a home for adults, convalescent home, home for the aged, intermediate care facility, hostel for

the mentally retarded or residential facility for the mentally retarded shall be made for the entire month in which the case is accepted if essential to retain the use of the facility. An allowance may be made to pay for the cost of such care for a period prior to the month in which the case was opened, but not prior to the date of application under the following specified conditions:

(i) such payment is essential to retain the care in the facility and no other facilities are available; and

(ii) the authorization for payment of such back bill receives written approval by the social services official or such other administrative officer as he may designate, provided such person is higher in authority than the supervisor who regularly approves authorization.

(c) *Allowance for care in a hostel*

The allowance to be provided for the cost of care in a hostel for the mentally retarded under voluntary auspices shall be based on a rate established by the Department.

(d) *Duplication of allowances and grants*

(1) Supplemental allowances and grants may not be made in excess of established schedules.

(2) A special allowance and grant may be made to duplicate a grant already made because the cash has been lost or stolen. Such duplicate allowance and grant is not reimbursable by the State.

Appendix:

F. *Exemption of income and resources*

1. *General policy on determination of availability of income and resources Department Regulation Section 352.7*

(a) All income and resources of an applicant for or recipient of AABD, ADC or HR shall be considered in order to determine its availability; such income and resources shall be reasonably evaluated; and, when determined to be available, after policies governing the exemption and disregard of such income and resources have been applied, shall be applied towards meeting the needs of an individual and his dependents. No inquiry shall be made of the amount of earnings of a child under 14 years of age.

(b) When the terms of an award, legislative intent of a government benefit, the rules of an organization paying a benefit, the nature of a trust fund, or the agreed-upon intent of a friend, non-legally responsible relative, social agency or other organization limits the use of cash income, the social services official shall abide by such restriction, when verified. The restriction may limit the use of the income to a specified purpose or to a particular member or members of the household. However, whenever any contribution from a non-legally responsible relative or friend is sought to be restricted for the purpose of supplementing a State prescribed or approved standard it shall not qualify as a permissible restriction of income, unless the social services official determines that the health and welfare of the recipient would be specifically and materially enhanced thereby.

New [(c) Any income of an applicant for or a recipient of AABD shall be disregarded in the amount of $7.50 per month.

2. *Earned income*

Department Regulation Section 352.8

(1) "Earned income" shall mean income in cash or in kind earned by an individual through the receipt of wages, salary, commissions, or profit from activities in which he is engaged as a self-employed individual or as an employee. Such earned income may be derived from his own employment such as a business enterprise or farming; or derived from wages or salary received as an employee. It includes earnings over a period of time for which settlement is made at one given time, as in the instance of sales of farm crops, livestock, or poultry. In instances of lump sum payment for services rendered over a period of more than one month, such income shall be prorated on a monthly basis with appropriate monthly exclusions. In considering income from farm operation, the option available for reporting under OASDI, namely the "cash receipts and disbursements" method, i.e., a record of actual gross, of expenses and of net is an individual determination and is acceptable. [See budgeting illustration in Section 4, exemption of earned income of a blind person.

III.F.2.(a)

(2) With reference to commissions, wages or salary, the term "earned income" means the total amount of earnings before deduction of any personal and non-personal expenses incident to employment.

(3) With respect to self-employment, the term "earned income" means the total profit from a business enterprise, farming, etc., resulting from the gross income received less the business expenses i.e., total cost of the production of the income. Personal expenses, such as income-tax payments, lunches and

transportation to and from work, are not classified as business expenses.

(b) *Computation of net earned income*

(1) In computing the amount of net earned income to be applied against the estimate of needs, the following method shall be utilized:

(i) The applicable amount of exempt earned income shall be deducted from the gross amount of earned income.

(ii) All expenses incident to employment, personal and non-personal, shall then be deducted.

(iii) Prescribed special work expenses next be deducted.

(iv) The net amount remaining shall be applied against the estimate of needs in determining the amount of assistance payment.

(2) In computing net earned income of a business, all operating expenses shall be deducted from the gross income, but in no instance shall there be an allowance for expenses in excess of income.

(3) In computing net income from client-owned property all operating expenses shall be deducted from gross property income and shall include usual carrying charges, principal payments and repairs. Where the income does not fully meet gross property cost but where the property is used as the home and where the net property cost is less than the agency rent schedule allows for such a recipient, the net cost may be included in the budget estimate of need as a shelter item.

(4) When wages are garnisheed, property income assigned, bank accounts attached, or other cash income is unavailable to the applicant or recipient, such income cannot be applied against need until and unless the agency can secure a release from such restriction.

III.F.2.(b)(4)

[NOTE: Social Services Law Section 137-a provides that earnings paid or payable to a recipient or a person otherwise in need of public assistance or care shall be exempt from assignment, income execution and installment payment. Written notification shall be sent by the social services official to the employer when the employee is a recipient or that he would become in need if the assignment, income execution and installment payment were enforced; and when public assistance to the employee or need therefore is terminated.]

3. *Expenses incident to employment Department Regulation Section 352.9*

(a) The following expenses incident to employment shall be deducted from gross earnings:

(1) All non-personal work expenses such as union dues, cost of tools, materials, uniforms and other special clothing required for the job, mandatory fees for licenses or permits fixed by law.

(2) All personal work expenses such as federal, state and local taxes, social security taxes, group insurance, lunches and transportation. The allowable deduction for meals incident to employment shall be in accord with the following schedule:

Rev. [

Lunch	$1.00
Dinner	1.45

[The expenses for day care shall be provided by means of a deduction from earnings when such expenses are less than the amount of income available for application against the estimate of needs; otherwise such day care expenses shall be provided for as a purchase of service. See Department Regulation Section 352.5.]

III.F.

4. *Exemption of earned income*
Department Regulation Section 352.10

(a) *Earned income of a blind person*

(1) The first $85 per month and one-half of gross earned income in excess of $85 per month shall be exempt and disregarded in determining the eligibility of such person for AABD and the eligibility for assistance of a dependent member of his family.

(2) Additional amounts of other income and resources as may be necessary to achieve a plan of self-support shall be allocated for one year, provided the plan has been approved by the Commission for the Blind and Visually Handicapped and the plan has been accepted and presented by the blind person as his own plan for which he wishes to use his own resources.

[Budgeting illustration: When a blind recipient earns income on a continuing basis but receives it only periodically, the income for the year should be totalled. The $85 monthly exemption should be totalled also for a year, or $1020. If the lump sum

or sums received during the year do not exceed $1020 the recipient may retain them and they are not budgeted as income. If the lump sums exceed $1020 for a year, one-half the excess is also deemed exempt income and the other half applicable as income against current and future needs. For example, a blind farmer receives net income per month ranging from $60 to $150 with an annual total of $1320. His budgeted needs during the year average $120 per month and the agency has granted the full $120 per month, exempting all income until the end of the year. The agency then subtracts $1020 (12 times $85) leaving a balance of $300. One-half of this is $150. The recipient properly retains, as exempt income, a total of $1020 plus $150, or $1170. The agency deducts the remaining $150 as income or takes a recovery of $150. The latter alternative keeps the case continually active as AABD.]

(b) *Earned income of ADC recipients and applicants.*

(1) All of the earned income of a child or minor receiving ADC, who is a full-time or part-time student not employed full-time, shall be exempt and disregarded as income or resources in determining eligibility or degree of need. For purposes of this paragraph:

(i) "School attendance" means attending a school, college or university or a course of vocational or technical training designed to fit a person for gainful employment or participation in the Job Corps under the Economic Opportunity Act.

(ii) "Part-time school attendance" means a school schedule equal to at least one-half of a full-time curriculum as determined by the educational authority.

Appendix.

Schedule SA-1

Monthly Grants and Allowances

NEW YORK CITY

COUNTIES OF: Dutchess, Greene, Monroe, Nassau, Suffolk, Ulster and Westchester and City of Poughkeepsie.

Number of Persons

One	*Two*	*Three*	*Four*	*Five*	*Six*	*Seven*	*Each Additional Person*
$ 77	128	179	230	281	328	375	47

Schedule SA-2

Monthly Grants and Allowances

COUNTIES OF: Albany, Broome, Cayuga, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Rensselaer, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Sullivan, Tioga, Tompkins, Warren, Washington, Wayne and Yates.

Number of Persons

One	*Two*	*Three*	*Four*	*Five*	*Six*	*Seven*	*Each Additional Person*
$ 69	115	161	207	253	294	335	41

Schedule SA-3

Monthly Grants and Allowances

COUNTIES OF: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Steuben and Wyoming.

Number of Persons

One	*Two*	*Three*	*Four*	*Five*	*Six*	*Seven*	*Each Additional Person*
$ 65	111	157	203	249	290	331	$ 41

Appendix.

Schedule SA-5

Monthly Allowances for Fuel for Heating

	1 & 2 Persons	3 & 4 Persons	5 & 6 Persons	7 & 8 Persons	9 & 10 Persons
New York City & Counties Of: Dutchess, Monroe, Nassau, Suffolk, Ulster, Westchester.					
Year Round Basis	$ 14.80	15.00	16.60	18.20	19.70
Eight Months Heating Season	20.50	21.00	23.35	25.75	28.40
Counties Of: Allegany, Chautauqua, Erie, Genesee, Niagara, Steuben.					
Year Round Basis	12.60	14.00	15.40	18.20	21.00
Eight Months Heating Season	19.00	21.10	23.10	27.40	31.60
City of Jamestown:					
Year Round Basis	9.20	9.70	11.00	12.20	13.30
Eight Months Heating Season	12.40	13.30	15.00	16.80	18.60
Counties Of: Albany, Broome, Cayuga, Chemung, Chenango, Columbia, Cortland, Greene, Livingston, Onondaga, Ontario, Orange, Orleans, Putnam, Rensselaer, Rockland, Schoharie, Tioga, Wayne and Yates.					
Year Round Basis	15.50	17.10	20.20	23.40	26.60
Eight Months Heating Season	22.60	25.00	29.70	34.40	39.20
Counties Of: Cattaraugus, Delaware, Fulton, Madison, Montgomery, Oneida, Otsego, Saratoga, Schenectady, Schuyler, Seneca, Sullivan, Tompkins, Warren, Washington and Wyoming.					
Year Round Basis	17.00	18.80	22.30	25.80	29.20
Eight Months Heating Season	24.80	27.40	32.60	37.80	48.00
Counties Of: Clinton, Essex, Franklin, Hamilton, Herkimer, Jefferson, Lewis, Oswego and St. Lawrence.					
Year Round Basis	18.60	20.50	24.30	28.10	31.80
Eight Months Heating Season	27.10	30.00	35.60	41.30	47.00

Schedule SA-6

Restaurant Allowance Schedule

Monthly allowances to be added to appropriate monthly grants and allowances for combinations of restaurant meals and meals prepared at home, including sales tax.

Lunch and dinner in a restaurant	$47.00
All meals in a restaurant	$64.00